IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 138/2005
(Jaidev Vs. State of Rajasthan & Ors.)

Date of Order : 22/02/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. R.S.Saluja for the petitioner.
Mr. S.N.Tiwari, Addl. Govt. Advocate.

BY THE COURT:-

Heard learned counsel for the petitioner.

By the instant writ petition, the petitioner has challenged the order dated 20.12.1988 Annex.14. The petition has been filed on 07.12.2004. By order Annex.14, a penalty of stoppage of three annual grade increments with cumulative effect was imposed on the petitioner.

A reply has been filed by the respondents stating therein that the order imposing penalty is appealable under Rule 23 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (for short 'the Rules of 1958' hereinafter) and without availing the alternative and efficacious remedy of an appeal, a belated writ petition has been filed. It

was further contended that the writ petition suffers from delay and laches.

Learned counsel for the petitioner submits that the order of imposing penalty is erroneous. He has relied on a decision of Hon'ble Supreme Court in Kulwant Singh Gill Vs. State of Punjab 1991 SCC (L&S) 998.

When the alternative remedy of appeal against the order impugned is very much available to the petitioner, the question whether the order imposing penalty of stoppage of three annual grade increments with cumulative effect is correct or not, can be gone into by the appellate authority. It is settled law that when efficacious alternative remedy is available, the writ jurisdiction should not be invoked in such matters.

A Constitution Bench of the Hon'ble Supreme Court, in G. Veerappa Pillai Vs. Raman & Raman Ltd., AIR 1952 SC 192, held that if there is statutory remedy of appeal/revision available to a person, the writ jurisdiction should not be invoked in such matters.

In C.A. Ibraham Vs. I.T.O., AIR 1961 SC 609 and H.B. Gandhi Vs. M/s. Gopinath & Sons, 1992 (Suppl.) 2 SCC 312, the Hon'ble Apex Court held that where hierarchy of appeals is provided by the statute, party must exhaust the statutory remedies before resorting to writ jurisdiction.

A Division Bench of this Court, in Laxman Singh

Verma Vs. State of Rajasthan & ors., 2000 (1) RLR 137, has considered this issue elaborately and after discussing large number of decisions of this Court and the Hon'ble Supreme Court in Gopilal Teli Vs. State, 1995 (1) RLR 1; Whirlphool Corporation Vs. Registrar of Trade Marks, AIR 1999 SC 22; Tin Plate Co. of India Ltd. Vs. State of Bihar, AIR 1999 SC 74; and Deepak Kumar Khinvsara Vs. Oil India Ltd., 1996 (1) RLR 95, came to the conclusion that writ should not generally be entertained if statute provides for remedy of appeal and even if it has been admitted, parties should be relegated to the appellate forum.

In Sheela Devi Vs. Jaspal Singh, (1999) 1 SCC 209, the Hon'ble Supreme Court held that if the statute itself provides for a remedy of revision, writ jurisdiction cannot be invoked.

A Constitution Bench of the Hon'ble Supreme Court, in K.S. Rashid & Sons Vs. Income Tax Investigation Commission & ors., AIR 1954 SC 207, held that Article 226 of the Constitution confers on all the High Courts a very wide power in the matter of issuing writs. The said power is limited. However, the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere.

Again, a Constitution Bench of the Hon'ble Supreme Court, in Union of India & ors. Vs. T.R. Verma, AIR 1957 SC 882,

held that it is well settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. The Apex Court held that existence of an another remedy does not affect the jurisdiction of the Court to issue a writ, but the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs and where such remedy is exhausted, it will be a sound exercise of discretion to refuse to interfere in a petition under Article 226 of the Constitution unless there are good grounds therefor.

Yet another Constitution Bench of the Hon'ble Supreme Court, in State of U.P. & ors. Vs. Mohammed Nooh, AIR 1958 SC 86, considered the scope of exercise of writ jurisdiction when remedy of appeal was there and held that writ would lie provided there is no other equally effective remedy.

Another Constitution Bench of the Hon'ble Supreme Court, in State of Madhya Pradesh & Anr. Vs. Bhailal Bhai etc. etc., AIR 1964 SC 1006, held that the remedy provided in a writ jurisdiction is not intended to supersede completely the modes of obtaining relief by an action in a civil court or to deny defence legitimately open in such actions. The power to give relief under Article 226 of the Constitution is a discretionary power.

In S.T. Mathuswami Vs. K. Natrajan & ors., AIR 1988

SC 616, the Hon'ble Supreme Court held that the High Court cannot be justified to exercise the power in writ jurisdiction if an effective alternative remedy is available to the party.

In Secretary, Minor Irrigation and Rural Engineering Service, U.P. & ors. Vs. Sangoo Ram Arya & Anr., AIR 2002 SC 2225, the Apex Court held that where the statute has provided for the constitution of a Tribunal for adjudicating the disputes of a Government servant, the fact that the Tribunal had no authority to grant an interim order, would be no ground to by-pass the said Tribunal.

Rule 23 of the Rules of 1958 reads as under :-

> "(1) A member of the Subordinate Service, Ministerial Service of Class VI service may appeal against an order imposing upon him any of penalties specified in rule 14 to the Authority as shown below :-
>
> (i)Subordinate Service.-Government in Administrative Deptt.
> (ii)Ministerial Service.- Government in Administrative Deptt.
> (iii) Class IV Service.- Head of Department.
>
> The Government may, however, by a general or special order specify any other authority to whom the appeal may be preferred against the order imposing any of the penalties under rule 14 of these rules by any of the Disciplinary Authorities.
>
> (2) A member of the State Service against whom an order imposing any of the penalties specified in rule 14 is made by an authority other than the government may appeal against such order to the Government.
>
> Provided that a member of the Rajasthan Higher Judicial Service or the Rajasthan Judicial

> Service against whom an order imposing any of the penalties specified in rule 14 except the penalty of removal or dismissal from service is made by an authority other than the Government may appeal only to a Committee consisting of the three judges of the Rajasthan High Court nominated by Chief Justice.
>
> Provided further that member of the State Service against whom an order imposing any of the penalties specified in rule 14, under the delegated authority is passed by the Commissioner for Department of Enquiries as Head of Department respect of embezzlement enquiry cases may appeal to the Government in the Administrative Department in respect of that Department.
>
> (3) Notwithstanding anything contained in sub-rules (1) to (3) an appeal against an order in a common proceeding held under rule 18 shall lie to the authority to which the authority functioning as the Disciplinary Authority for the purpose of that proceedings is immediately subordinate.
>
> (4) Where an appeal lie to the Government under this rule, the decision thereon shall be taken after consultation with the Public Service Commission, where such consultation is necessary.
>
> Explanation.- In this rule expression "member of a Civil Service" includes a person who has ceased to be a member of that service."

In this view of the matter, in my view, the impugned order imposing penalty is appealable under Section 23 of the Rules of 1958 and the writ petition has to be dismissed on the ground of not exhausting the alternative remedy of appeal. The question as to whether the disciplinary authority has the jurisdiction to impose the penalty as imposed can be gone into by the appellate authority.

Accordingly, the writ petition is dismissed on the ground of not availing the alternative remedy of appeal. However, it is open for the petitioner to file an appeal against the order impugned before the appellate authority and if such an appeal is filed within one month from today, the period of limitation would not come in the way of the petitioner and appellate authority shall decide the appeal on merit. There shall be no order as to costs.

(H.R.PANWAR),J.

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